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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

17 || EPIC GAMES, INC.,

Plaintiff,

V.

SAMSUNG ELECTRONICS CO. LTD;
SAMSUNG ELECTRONICS AMERICA,
INC.; and GOOGLE LLC.

Case No. 3:24-cv-06843-JD

**JOINT ADMINISTRATIVE
MOTION PURSUANT TO LOCAL
RULE 7-11**

Judge: Hon. James Donato

Action Filed: September 30, 2024

Defendants.

1 Pursuant to Local Rule 7-11, Plaintiff Epic Games, Inc. (“Epic”), Defendants Samsung
 2 Electronics Co., Ltd. and Samsung Electronics America, Inc. (“Samsung”), and Defendant Google
 3 LLC (“Google,” and together with Samsung, “Defendants”) file this joint administrative motion
 4 requesting the Court to schedule the initial Case Management Conference (“CMC”), Rule 26(f)
 5 conference, and related deadlines.

6 **I. EPIC’S POSITION**

7 In accordance with Rules 26(f) and 16(b), Epic sought to confer with Defendants by
 8 December 9, 2024.¹ Defendants refused, claiming the initial CMC should be delayed until
 9 Defendants respond to Epic’s Complaint on January 21, 2025 and that discovery should be further
 10 stayed pending resolution of their anticipated motions to dismiss. This delay is unwarranted and
 11 prejudicial to Epic. Epic seeks an order confirming the deadlines set by the Federal Rules;
 12 specifically: (i) Defendants must confer with Epic pursuant to Rule 26(f) by **December 9, 2024**;
 13 (ii) the Parties must file a discovery plan by **December 23, 2024**; and (iii) setting an initial CMC at
 14 the Court’s earliest convenience.²

15 When Google sought to delay discovery in the *Epic v. Google* litigation, the Court held that
 16 discovery should not be stayed except in “extraordinary circumstances”.³ No such circumstances
 17 exist here. Defendants have had Epic’s Complaint—which details Defendants’ anticompetitive
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19 _____
 20 ¹ Because no Scheduling Order has been entered, the Parties must confer at least 21 days before
 21 such Order is due. Fed. R. Civ. P. 26(f)(1). The deadline to issue a Scheduling Order is 60 days after
 22 any defendant’s appearance. Fed. R. Civ. P. 16(b). Google appeared in the case on October 29, 2024
 23 (Dkt. 25), so a Scheduling Order is due by December 30, 2024. Fed. R. Civ. P. 16(b)(2). The Parties
 24 must confer 21 days before that Order is due, *i.e.*, by December 9, 2024. Fed. R. Civ. P. 26(f)(1).
 25 Nothing in the Court’s October 1, 2024 order (Dkt. 19) or the October 5, 2024 stipulation (Dkt. 23)
 26 altered the Parties’ obligations under these rules.

27 ² Epic repeatedly pleaded with Defendants to file this joint statement no later than December
 28 4, 2024, to allow the Court time to rule before December 9, 2024. Epic proposed an initial exchange
 29 of drafts on December 3, 2024 at 2pm PT, to no avail. Samsung agreed to exchange at 10:15am PT
 30 on December 4, but Google failed to meet that deadline, citing the “time difference”. Epic then
 31 proposed another exchange at 4pm PT. Samsung asked until 8pm PT. Epic agreed. When the Parties
 32 exchanged drafts at 8pm PT, Google stated that it would not be able to get sign off to file because it
 33 was “past close of business” in California. Epic sought, and still seeks, to resolve this so that the
 34 Parties can get a discovery plan done before the holidays.

35 ³ See 10.08.2020 Hearing Tr. 11:15-17 (3:20-cv-05671-JD; Dkt. 69) (“Except in extraordinary
 36 circumstances, . . . I do not stay discovery pending a motion to dismiss.”).

1 conduct, a continuation of their longstanding and well-documented anticompetitive arrangements—
 2 for over two months, more than enough time to evaluate it and determine an initial litigation strategy.
 3 Defendants' assertion that they will file motions to dismiss is hardly extraordinary. If discovery
 4 were stayed every time a defendant made that assertion, stays would be the rule rather than an
 5 exception. That is not the law. *See In re Valence Tech. Sec. Litig.*, 1994 WL 758688, at *3 (N.D.
 6 Cal. Nov. 18, 1994) (denying stay of discovery where defendant relied "solely on the possible
 7 success of his upcoming motion to dismiss"). Defendants' assertion that the Court needs the benefit
 8 of yet-to-be filed motions to dismiss to evaluate a yet to-be-filed motion to stay discovery is not a
 9 reason to delay a Rule 26(f) conference. This Court can evaluate the motions once they have been
 10 filed. Finally, Samsung's argument that proceeding with discovery is inconsistent with the Parties'
 11 October 5, 2024 stipulation (Dkt. 23) is incorrect. As Samsung concedes, the text of the stipulation
 12 did not alter the Parties' obligations under Rule 26(f) and the Parties never discussed discovery
 13 when negotiating the stipulation. It would therefore be both unwarranted and prejudicial to delay
 14 discovery on that account.

15 **II. DEFENDANTS' POSITION**

16 Upon reassignment from Magistrate Judge Spero, the Court vacated the previously set
 17 January 8, 2025 initial CMC, ordering that "Any case management conference in any reassigned
 18 case will be rescheduled by the Court. The parties shall adjust the dates for the conference,
 19 disclosures and report required by FRCivP 16 and 26 accordingly." ECF No. 19. The Court has not
 20 set a date for an initial CMC; therefore no dates are set for the Rule 16 and 26 related deadlines.
 21 Plaintiff's position therefore conflicts with the Court's order, which is what Defendants conveyed
 22 to Plaintiff when it sought to confer under Rule 26(f) and why Defendants proposed seeking the
 23 Court's guidance.⁴ Defendants respectfully request that the Court schedule the initial CMC for a
 24 date after the deadline for Defendants to respond to the Complaint, i.e., January 21, 2025.
 25 Defendants each intend to file a dispositive motion on or before that day.

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 27 ⁴ Epic's complaints about alleged delay with respect to its arbitrary and unilateral deadlines are
 28 unfounded. Defendants have been working expeditiously with clients in Asia and across various
 time zones to agree to language in a joint position statement. Further, Epic agreed to a deadline of
 filing this joint statement by 12pm noon PT on December 5.

1 *First*, Epic's position ignores the Court's order vacating the initial CMC date and deadlines
 2 at issue; in that order, the Court stated, "The parties shall adjust the dates for the conference,
 3 disclosures and report required by FRCivP 16 and 26 accordingly." ECF No. 19. Civil Local Rule
 4 3-12(g) is in accord. Rule 26(f) provides that, "[e]xcept . . . **when the court orders otherwise**, the
 5 parties must confer as soon as practicable." The Court has ordered otherwise.

6 *Second*, Samsung and Epic reached an agreement whereby Samsung accepted service for
 7 Defendant Samsung Electronics Co., Ltd., a Korean entity. Epic thereby avoided onerous
 8 international service channels and requirements. In exchange, the parties agreed that Samsung had
 9 until January 21, 2025, to respond to the Complaint. Samsung's accommodation prevented a much
 10 longer delay, and the parties' agreement makes little sense if Samsung is forced to respond to Epic's
 11 discovery requests in the interim. Samsung should be entitled to the benefit of its bargain.

12 *Third*, Epic's request to force the parties to confer in four days and file a joint discovery
 13 report the day before Christmas Eve is an improper effort to prematurely start discovery and makes
 14 little sense when the Defendants' responses to the Complaint are not due until a month later. Epic
 15 has identified no reason for its insistence. There is no unwarranted or prejudicial delay to Epic in
 16 scheduling the initial CMC just a matter of weeks after it was originally set when the case was filed.⁵

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⁵ Samsung intends to file a motion to stay discovery alongside its dispositive motion to dismiss. This further counsels in favor of scheduling the initial CMC and related deadlines for after those motions are filed. This case presents extraordinary circumstances; Epic's CEO admitted on the day the Complaint was filed that "he doesn't yet have proof that Google and Samsung colluded — he's hoping that comes out in the legal discovery process." Sean Hollister, Epic is suing Google — again — and now Samsung, too, *The Verge* (Sep. 30, 2024) <https://tinyurl.com/mr3awf5c>.

1 Dated: December 5, 2024

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